

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicants' previously submitted amendment under 37 CFR 1.116 filed on 20 August 2007 and previously submitted terminal disclaimer filed on 15 October 2007 have been entered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baillargeon et al (7,067,049).

Baillargeon et al ["Baillargeon"] disclose formulated lubricating oils derived from highly paraffinic basestocks, specifically wax isomerate basestocks, which have unusually good low-temperature and high-temperature properties which allow unusually broad formulation flexibility compared to traditional hydroprocessed base oils. See column 4, lines 11-30. The formulated lubricant oils of Baillargeon comprise a wax isomerate paraffinic hydrocarbon basestock

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component in which the extent of branching (BI) and the proximity of branching ($\text{CH}_2 > 4$) are such that:

$$\text{BI} - 0.5(\text{CH}_2 > 4) > 15; \text{ and } \text{BI} + 0.85(\text{CH}_2 > 4) < 45$$

as measured over the hydrocarbon basestock as a whole. Baillargeon teaches that the hydrocarbon composition is produced by the isomerization of Fischer-Tropsch waxes and/or other waxy hydrocarbon materials such as conventional waxy lube raffinates, slack waxes, deoiled slack waxes, foots oil and lube distillate hydrocrackates. The primary basestocks of the prior art to Baillargeon are characterized by the unique combination of both a high viscosity index and an extremely low pour point. Specifically, the highly paraffinic basestock has pour points from about -25°C to about -55°C , a viscosity index from about 130 to about 160, kinematic viscosities ranging from about 2 cSt to about 13 cSt. See column 8, lines 25-38. The examiner is of the position that the highly paraffinic basestock of Baillargeon appears to meet the limitations of the base stock or base oil of the claims since the properties of (i) viscosity index of about 130 or greater and (ii) pour point of about -35°C or lower may be the same. Although the claimed limitation in independent claims 1 and 13 that the base stock or base oil have (iii) "a ratio of measured-to-theoretical low-temperature viscosity equal to about 1.2 or less, at a temperature of about -30°C or lower, where the measured viscosity is cold-crank simulator viscosity and where theoretical viscosity is calculated at the same temperature using the Walther-MacCoull equation wherein the base stock or base oil is not a Group IV base stock or base oil" is not disclosed in Baillargeon, the examiner is of the position that the property may be the same in the base oils disclosed in the prior art since the properties of VI and pour point may be the same, and since the claimed base stock or base oil may be prepared by the same hydrodewaxing

process. Baillargeon teaches that the highly paraffinic basestocks may contain one or more additives such as detergents and antioxidants, and may optionally contain other basestocks such as mineral oils, polyalphaolefins, esters, polyalkylenes, alkylated aromatics, hydrocrackates and solvent-refined basestocks. See column 5, lines 35-64 and column 8. The examiner is of the position that Baillargeon meets the limitations of the above rejected claims.

Conclusion

The provisional rejection of claims 1-21 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-15 of copending Application No. 10/678,547 made in the previous office action is withdrawn in view of the submission of a terminal disclaimer on 15 October 2007.

The rejection of claims 1 and 13 under 35 U.S.C. 112, second paragraph, as being indefinite, made in the previous office action is withdrawn in view of the amendments to these claims made on 20 August 2007.

The rejection of claims 1-21 under 35 U.S.C. 103(a) as being unpatentable over Murphy et al (6,620,312) is withdrawn in view of applicants' arguments that the pour point of -35°C of the claimed base stocks or base oils is lower than the pour points of -20°C to -24°C for the unformulated basestock disclosed in Murphy et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ellen M. McAvoy whose telephone number is (571) 272-1451. The examiner can normally be reached on M-F (7:30-5:00) with alt. Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Caldarola can be reached on (571) 272-1444. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ellen M McAvoy/

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